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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,586	01/29/2004	Timo K. Miettinen	042933/272475	7420

826 7590 06/27/2007

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EXAMINER
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PHUONG, DAI

ART UNIT	PAPER NUMBER
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2617

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/767,586	<b>Applicant(s)</b> MIETTINEN, TIMO K.	
	<b>Examiner</b> Dai A. Phuong	<b>Art Unit</b> 2617	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). *request for reconsideration*  
 7. ☒ For purposes of appeal, the ~~proposed amendment(s)~~ *request for reconsideration* a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-23, 25, 27, 29


Claim(s) withdrawn from consideration: \_\_\_\_\_

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please See Attachment.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_

  
 DUC M. NGUYEN  
 SUPERVISORY PRIMARY EXAMINER  
 TECHNOLOGY CENTER 2600

## ADVISORY ACTION

### *Response to Argument*

1. Applicant, on page 3-7 of his response, argues that neither Fukuda nor Gargiulo (nor Miyaji), taken individually or in any proper combination, teach or suggest performing a predefined action based upon (a) information relating to the service type (received from a RF tag or a device adapted to operate as such), (b) an application actively operating on the terminal, and (c) a current state of the application when the controller receives the information, where the predefined action (first predefined action or second predefined action) differs for different states of the application (receiving data or presenting data). However, the Examiner respectfully disagrees.

First, in response, during patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 51 (CCPA 1969). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). See MPEP 2111.

Second, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (where the predefined action (first predefined action or second predefined action) differs for different

states of the application (receiving data or presenting data) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Third, Fukuda discloses the user instructs the portable 12 to receive and enter information from the advertisement 11 (please Figure. 1). The advertisement 11 includes the URL, detailed advertising information and advertising identification number. When the above information such as the URL is transferred, the portable 12 stores these in the URL memory storage 57. Next, the portable 12 is starting up the browser software for viewing the home page, connects to the Internet 14 after using the mobile communication section 52 to connect to the mobile communications network 13 (the portable 12 tries to access to the server 15). *When accessing the server 51, the portable 12 uploads the user information stored in the user information memory 56 and also the advertisement identification number stored in the URL memory storage 57. The portable 12 then downloads (predefined action) the home page from the server 15 that was accessed* (predefined action based upon (a) information relating to the service type (received from a RF tag or a device adapted to operate as such), (b) an application actively operating on the terminal, and (c) a current state of the application when the controller receives the information). The portable 12 may also *display the detailed advertising* (a second) information to the user by using the download software. The detailed advertising information contains detailed information such as price information that could not be listed on the paper surface of the advertisement 11 as related above. The applicant is directed to the reference Fukuda, paragraph 66 to paragraph 82.

2. Applicant, on page 3-7 of his response, argues that combining prior art references without evidence of such a suggestion, teaching, or motivation. However, the Examiner respectfully disagrees.

First, Gargiulo discloses in paragraph 160 to paragraph 168 that the user requests a main ring tune deck from a ring tune or media server 530 by entering the URL of the media server. The URL may also be selected for a pre-stored list of URLs commonly referred to in the art as bookmarks or favorites. The media *server 530 has received the requests and delivers a main HDML* deck consisting of links that define ring tune or other media categories to the mobile station 500. This is routed through the carrier network via WAP gateway. *The categories are presented on display 110 (see FIG. 1) of mobile station 500. The User may then choose a category of media.* For example, the user may be interested in movie tunes/jingles and selects this category. The selection has an URL tied to an Active Server Page (ASP). This is routed by the carrier network 510 via WAP gateway through Internet 520 to the media server. The media server 530 generates a database record and a transaction number that reflects the specific mobile station request based on time and MIN. The media server sends the tune file and programmatically, (using ASP, JAVA applet and the like), generated reply URL header to handset in proper format using specific MIME-type as described above. The mobile station recognizes the mime content and passes the data to the mobile station's device layer. The mobile station verifies the data format and stores the file into temporary random access memory (RAM), e.g. memory 180 or cache of processor 170 in FIG. 1. The file may include reply URL with transaction number, tune/bitmap data and a label tag. The user is then prompt via display on the mobile station. The user may "back away" and discard the media (step 4143). In this case, the

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transaction would be terminated and the user will not be bill for the media content. The user may also save without previewing or listen to the ring turn and/or view the image. For that reason above, the examiner contends that Gargiulo is properly combined with Fukuda.

Second, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Third, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).